

§ 2-218.01. Short title

This subchapter may be cited to as the "Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005."

§ 2-218.02. Definitions.

For the purposes of this subchapter, the term:

(1) "Agency" means an agency, department, office, board, commission, authority or other instrumentality of the District government, with or without a legal existence separate from that of the District government.

(1A) "Business enterprise" means a business entity organized for profit.

(1B) "Certified business enterprise" means a business enterprise or joint venture certified pursuant to Part D [§ 2-218.31 et seq.] of this subchapter.

(2) Repealed.

(3) "Department" means the Department of Small and Local Business Development, established by § 2-218.11.

(4) "Director" means the Director of the Department of Small and Local Business Development.

(5) "Disadvantaged business enterprise" means a business enterprise as described in § 2-218.33.

(6) "District of Columbia Supply Schedule" or "DCSS" means the District of Columbia's multiple award schedule procurement program for providing commercial products or services to District government agencies.

(7) "Economically disadvantaged individual" means an individual whose ability to compete in the free enterprise system is impaired because of diminished opportunities to obtain capital and credit as compared to others in the same line of business where such impairment is related to the individual's status as socially disadvantaged. An individual is socially disadvantaged if the individual has reason to believe that the individual has been subjected to prejudice or bias because of his or her identity as a member of a group without regard to his or her qualities as an individual.

(8) "Enterprise zone" means:

(A) The area of the District designated as the District of Columbia Enterprise Zone under 26 U.S.C.S. § 1400; or

(B) An economic development zone designated by the Mayor and approved by the Council pursuant to §§ 6-1501 through 6-1504.

(9) "Expendable budget" means the total appropriated budget of an agency, reduced by such funding sources, object classes, objects, and other items, including any contract, the value of which, does not lend itself to performance by a small business enterprise, as shall be identified by the Mayor through rulemaking.

(9A) "Government-assisted project" means:

(A) A contract executed by an Agency on behalf of the District or pursuant to statutory authority that involves District funds or, to the extent not prohibited by federal law, funds that the District administers in accordance with a federal grant or otherwise;

(B) A project funded in whole or in part by District funds;

(C) A project that receives a loan or grant from a District agency;

(D) A project that receives bonds or notes or the proceeds thereof issued by a District agency, including tax increment financing or payment in lieu of tax bonds and notes, industrial revenue bonds;

(E) A project that receives District tax exemptions or abatements that are specific to the project and not to the nature of the entity undertaking the project, i.e. a religious institution or nonprofit corporation;

(F) A project conducted pursuant to a disposition under D.C. Code §10-801.

(11) "Joint venture" means a combination of property, capital, efforts, skills, or knowledge of 2 or more persons or businesses to carry out a single project.

(12) "Local business enterprise" means a business enterprise as described in § 2-218.31.

(12A) "Local manufacturing business enterprise" means a business enterprise as described in § 2-218.39.

(13) "Longtime resident business" means a business enterprise that has been continuously eligible for certification as a local business enterprise, as defined in § 2-218.31, for 20 consecutive years, or a small business enterprise, as defined in § 2-218.32, for 15 consecutive years.

(14) "Regional governmental entity" means an organization that represents the District and surrounding local or state governments.

(15) "Resident-owned business" means a local business enterprise the owners of more than 50% of which are subject to personal income tax in the District of Columbia.

(16) "Small business enterprise" means a business enterprise as described in § 2-218.32.

(17) "Veteran-owned business enterprise" means a business enterprise as described in § 2-218.38.

§ 2-218.11. Establishment of the Department of Small and Local Business Development.

(a) Pursuant to § 1-204.04(b), there is established, as a subordinate agency, in the Executive Branch of the government of the District of Columbia, the Department of Small and Local Business Development.

§ 2-218.12. Director of the Department of Small and Local Business Development.

(a) (1) The Department shall be under the supervision of a Director who shall carry out the functions and authorities assigned to the Department.

(2) The Mayor shall appoint the Director with the advice and consent of the Council.

(b) The Director shall have full authority over the Department and all functions and personnel assigned to the Department, including the power to re-delegate to other employees and officials of the Department such powers and authority as in the judgment of the Director are warranted in the interests of efficiency and sound administration.

(c) The Director shall monitor the accomplishment of the requirements of this subchapter

(d) Repealed.

(e) Repealed.

(f) Repealed.

(g) The Director shall have the authority to enforce the provisions of this subchapter and may impose fines, fees, penalties, and other remedial actions for violations of and non-compliance with § 2-218.63 or the regulations promulgated pursuant to this subchapter. Within 90 days of the effective date of this act, the Department shall issue rules and regulations for enforcement of violations and imposition of fines, fees, penalties, and other remedial actions for violations of and non-compliance with this subchapter.

§ 2-218.13. Functions of the Department.

(a) (1) It shall be the goal and responsibility of the Department to stimulate and foster the economic growth and development of certified business enterprises, with the intended goals of:

- (A) Stimulating and expanding the local tax base of the District of Columbia;
- (B) Increasing the number of viable employment opportunities for District residents; and
- (C) Extending economic prosperity to local business owners, their employees, and the communities they serve.

(2) Through advocacy, business development programs, and technical assistance offerings, the Department shall seek to maximize opportunities for certified business enterprises to participate in:

- (A) The District's contracting and procurement process;
- (B) The District's economic development activities; and
- (C) Federal and private sector business opportunities.

(b) The Department shall administer Part D of this subchapter except for those responsibilities assigned to another agency by this subchapter or through an order of the Mayor. The Director shall establish procedures and guidelines for the implementation of the programs established pursuant to Part D of this subchapter.

(c) The Director shall establish within the Department, oversee and administer such divisions, offices or other units as may be necessary or appropriate to perform the functions and duties of the Department.

(c-1) The Department shall have the authority to issue grants to local businesses (whether or not certified pursuant to this subchapter), community and neighborhood groups or other nonprofit organizations as necessary to effectuate the mission of the Department and the purposes of this subchapter.

(d) The Department shall have the authority, in reviewing participation by certified business enterprises, to disregard participation by certified business enterprises when the certified business enterprise serves no commercially useful function in the performance of a contract.

(e) The Director may take such other actions as are necessary or appropriate to carry out the provisions of this subchapter.

§ 2-218.14. Transfers from the Office of Local Business Development to the Department of Small and Local Business Development.

All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Office of Local Business Development established by § 2-1205.01 [repealed], are hereby transferred to the Department.

§ 2-218.21. District of Columbia Small and Local Business Opportunity Commission Establishment; composition; appointment; term of office; qualifications; vacancies; removal; compensation.

Repealed.

§ 2-218.22. Functions of the Commission.

Repealed.

§ 2-218.24. Record keeping.

(a) Repealed.

(b) Repealed.

(c) Repealed.

§ 2-218.25. By-laws and internal rules.

Repealed.

§ 2-218.31. Local business enterprises.

A business enterprise shall be eligible for certification as a local business enterprise if the business enterprise:

(1) Has its principal office located physically in the District of Columbia;

(2) Requires that its chief executive officer and 60% of the highest level managerial employees of the business enterprise maintain their offices and perform their managerial functions in the District

(3) Can demonstrate one of the following:

(A) More than 50% of the employees of the business enterprise are residents of the District;

(B) The owners of more than 50% of the business enterprise are residents of the District; or

(C) (1) More than 50% of the assets of the business enterprise, excluding bank accounts, are located in the District; and

(2) More than 50% of the business enterprise's gross receipts are District gross receipts. District gross receipts" means all income derived from any activity whatsoever from sources within the District, other than income a local business enterprise derives from an ownership or beneficial interest in other local business enterprises, whether compensated in the District or not, prior to the deduction of any expense whatsoever connected with the production of the income, provided, that the calculation of the income shall not include:

(a) The collection of federal or local taxes on motor vehicle fuel; or

(b) Fees retained by a retail establishment under D.C. Code§ 8-102.03(b)(1).

and

(4) Can demonstrate one of the following:

(A) Is licensed pursuant to Chapter 28 of Title 47;

(B) Is subject to the tax levied under Chapter 18 of Title 47; or

(C) Is a business enterprise identified in § 47-1808.01(1) through (5) and more than 50% of the business is owned by residents of the District.

§ 2-218.32. Small business enterprises

(a) A business enterprise shall be eligible for certification as a small business enterprise if the business enterprise:

(1) (A) Is a local business enterprise;

(B) Repealed;

(2) Is independently owned, operated, and controlled; and

(3) Is certified by the United States Small Business Administration as a small business concern or has averaged annualized gross receipts for the preceding three (3) years that are equal to or less than size standards under the then effective regulations promulgated pursuant to the Small Business Act, as amended (15 U.S.C.S. § 631 et seq.); provided, however, that the Department may, from time to time, promulgate size standards that are different than those used by the Small Business Administration and if the Department has promulgated such regulations then the size standards adopted by the Department shall govern.

(4) The Department shall promulgate regulations setting a net worth limit for small investors under §2-218.49a(a)(2).

(b) A business enterprise that is affiliated with another business enterprise through common ownership, management, or control shall be eligible for certification as a small business enterprise if:

(1) The business enterprise seeking certification as a small business enterprise is a local business enterprise; and

(2) The consolidated financial statements of the affiliated business enterprises do not exceed the average annualized gross receipt limits established by subsection (a)(3) of this section.

(c) If a business enterprise seeking certification as a small business enterprise is affiliated only with one or more business enterprises that are in a different line of business, subsection (b) of this section shall not apply, and the business enterprise shall be eligible for certification as a small business enterprise if it meets the requirements of subsection (a) of this section.

§ 2-218.33. Disadvantaged business enterprises.

(a) A business enterprise shall be eligible for certification as a disadvantaged business enterprise if the business enterprise is:

(1) Owned, operated, and controlled by economically disadvantaged individuals; and

(2) (A) Is a small business enterprise;

(B) Repealed.

(b) A business enterprise that is affiliated with another business enterprise through common ownership, management, or control shall be eligible for certification as a disadvantaged business enterprise if:

(1) The business enterprise seeking certification as a disadvantaged business enterprise is a small business enterprise; and

(2) In the event of a parent-subsidary affiliation, both enterprises meet the requirements of subsection (a) of this section.

(c) In determining whether a business enterprise is affiliated with another business enterprise, the Department shall consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.

§ 2-218.34. Qualified metropolitan area business enterprises.

Repealed.

§ 2-218.35. Resident-owned businesses.

A business enterprise shall be eligible for certification as a resident-owned business if it meets the definition of resident-owned business pursuant to § 2-218.02.

§ 2-218.36. Longtime resident businesses.

A business enterprise shall be eligible for certification as a longtime resident business if it meets the definition of longtime resident business pursuant to § 2-218.02.

§ 2-218.37. Local business enterprises with principal offices located in an enterprise zone.

A local business enterprise shall be eligible for certification as a local business enterprise with principal offices located in an enterprise zone if its principal offices are located in an enterprise zone as defined by § 2-218.02.

§ 2-218.38. Veteran-owned business enterprises

A business enterprise shall be eligible for certification as a veteran-owned business enterprise if the business enterprise:

- (1) Meets the definition of a small business enterprise as described in § 2-218.32;
- (2) Is not less than 51% owned and operated by one or more veterans (as defined in 38 U.S.C.S. § 101(2));
- (3) In the case of any publicly owned business, not less than 51% of the stock of which is owned by one or more veterans; and
- (4) One or more veterans control the management and daily operations.

§ 2-218.39. Local manufacturing business enterprises.

A business enterprise shall be eligible for certification as a local manufacturing business enterprise if the business enterprise:

- (1) Meets the definition of a local business enterprise as described in § 2-218.31;
- (2) Makes a product through a process involving raw materials, components, or assemblies, usually on a large scale, with different operations divided among different workers;
- (3) Has an annual revenue of \$ 2 million in the manufactured product; and
- (4) Has its principal location of manufacturing in the District of Columbia.

§ 2-218.39a. Certified joint venture.

(a) A joint venture shall be eligible for certification as a certified joint venture if the joint venture intends to submit a response to a solicitation in which the joint venture will provide goods or perform services, and has a member that owns a majority interest or minority interest in the joint venture and meets the definition of a certified business enterprise pursuant to § 2-218.02(1B). A joint venture shall be certified for a specific solicitation. The Department shall promulgate regulations that provide for a simplified procedure for certification of joint ventures to be utilized by a joint venture seeking certification following the Department's prior certification of a joint venture with the identical joint venture participants and structure.

(b) For the purposes of this section, the term:

(1) "Majority interest" means:

(A) More than 50% of the total combined voting power of all classes of stock of the joint venture business enterprise or more than 50% of the total value of all of the joint venture business enterprise;

(B) A financial contribution to the enterprise of more than 50%; and

(C) More than 50% of the total interest in the capital, profits, and loss, or beneficial interest in the joint venture business enterprise.

(2) "Minority interest" means:

(A) Less than 50% of the total combined voting power of all classes of stock of the joint venture business enterprise or less than 50% of the total value of all of the joint venture business enterprise;

(B) A financial contribution to the enterprise of less than 50%; and

(C) Less than 50% of the total interest in the capital, profits, and loss, or beneficial interest in the joint venture business enterprise.

(c) In determining whether a joint venture is eligible to be certified as a certified joint venture, the Department shall consider the totality of the circumstances, including the defined contributions and defined benefits provided by each member of the joint venture, which shall be demonstrated by the following information:

(1) Organizational documents of the joint venture, including the joint venture agreement, the operating agreement, and any other agreement between or among the members of the joint venture; and

(2) Documentation of the financial contribution of each joint venture member, including access to bank records and organizational resolutions and agreements.

(d) Decisions concerning the affairs of the business shall require the consent of those members with voting rights holding at least a majority interest in the business.

(e) A joint venture shall relinquish its status as a certified joint venture if it has not been awarded the contract or if the solicitation has been withdrawn or cancelled.

(f) Unless a joint venture's certification is revoked earlier pursuant to the provisions of this act, a certified joint venture shall retain its certification for the duration of the contract awarded through the solicitation for which it was certified, including any extension of such contract.

(g) A joint venture shall not be certified:

(1) To meet the small and certified business enterprise subcontracting requirements set forth in section 2-218.46; or

(2) To meet the small and certified business enterprise equity and development participation requirements set forth in section 2-218.49a.

(h) A certified joint venture shall receive preference points or price reductions in accordance with § 2-218.43 as follows:

(1) If the Department determines that a certified business entity owns a majority interest in the joint venture, the joint venture shall receive the preference points or price reductions that the certified business entity would receive in accordance with § 2-218.43; provided, however, that if the certified joint venture is formed to serve as a general contractor on a project, the joint venture shall be required also to establish to the reasonable satisfaction of the Department that:

(A) Any bond for the project shall be provided by the certified business entity. In order to satisfy this requirement, the certified business enterprise participant shall be solely and individually liable as the principal to the surety for at least 51% of each claim asserted under the bond and such liability shall not be joint and several;

(B) The individual who shall be responsible for project decisions, i.e. the project executive, shall be provided by the certified business entity; and

(C) At least 50% of the staff that the joint venture will devote to the project will be provided by the certified business entity.

(2) If the Department determines that a certified business entity owns a minority interest in the joint venture, the Department's certification of the joint venture shall indicate such and specify the preference points or price reductions that the joint venture shall receive, but in no event shall the preference points or price reductions exceed 50% of the preference points or price reductions that would otherwise be applicable to the certified business joint venture partner.

(3) Similar to the requirements set forth in subsection (1)(A)-(C) of this section, the Department may adopt regulations that establish additional industry specific requirements for the certification of a joint venture as having a majority interest held by a certified business entity.

§ 2-218.41. Goals for District agencies with respect to contracting and procurement.

(a) Each agency, including an agency that contracts or procures in whole or in part through the Office of Contracting and Procurement, shall exercise its contracting and procurement authority so as to meet, on an annual basis, the goal of procuring and contracting 50% of the dollar amount of its goods and services, including construction goods and services, its expendable budget to small business enterprises.

(b) The provisions of this subchapter relating to contracting and subcontracting goals and requirements shall be applicable to every government-assisted project unless the Department, by regulation, establishes a specific exemption for a particular type or class of government-assisted project.

§ 2-218.42. Required programs, procedures, and policies to achieve contracting and procurement goals.

To achieve the goals set forth in this subchapter, the Department shall, within 90 days of the effective date of this act, propose rules and regulations pursuant to § 2-218.72 to implement programs for certified business enterprises, including :

- (1) A bid preference mechanism for certified business enterprises;
- (2) A set-aside program for small business enterprises; and
- (3) A set-aside program for certified business enterprises for the District of Columbia Supply Schedule.

§ 2-218.43. Bid and proposal preferences

(a) In evaluating bids or proposals, agencies shall award preferences as follows:

(1) In the case of proposals, points shall be granted as follows:

- (A) Three points for a small business enterprise;
- (B) Five points for a resident-owned business;
- (C) Five points for a longtime resident business;
- (D) Two points for a local business enterprise;
- (E) Two points for a local business enterprise with its principal office located in an enterprise zone;
- (F) Two points for a disadvantaged business enterprise;
- (G) Two points for a veteran-owned business enterprise; and
- (H) Two points for a local manufacturing business enterprise.

(2) In the case of bids, a percentage reduction in price shall be granted as follows:

- (A) Three percent for a small business enterprise;
- (B) Five percent for a resident-owned business;
- (C) Five percent for a longtime resident business;
- (D) Two percent for a local business enterprise;
- (E) Two percent for a local business enterprise with its principal office located in an enterprise zone;
- (F) Two percent for a disadvantaged business enterprise; and
- (G) Two percent for a veteran-owned business enterprise.
- (H) Two percent for a local manufacturing business enterprise.

(b) A certified business enterprise shall be entitled to any or all of the preferences provided in this section, but in no case shall a certified business enterprise be entitled to a preference of more than 12 points or a reduction in price of more than 12 percent.

§ 2-218.44. Mandatory set-asides of District agency contracts for small business enterprises or certified business enterprises.

(a) Except as provided in § 2-218.45, each agency shall set aside contracts or procurements of \$250,000 or less for small business enterprises.

(a-1) If an agency determines in writing that there are not at least 2 responsible small business enterprises that can provide the services or goods that are the subject of the contract, the agency may use any certified business enterprise to fulfill the requirements of subsection (a) of this section.

(b) An agency may decline to award a contract or procurement set aside under this section, and may thereafter issue the contract or procurement in the open market if the agency determines in writing that the bids for the contract or procurement set aside for a small or certified business enterprise are believed to be 12% or more above the likely price on the open market.

(c) Each written determination pursuant to subsection (a-1) or (b) must be submitted to the Director, who shall post a copy of the determination so that it can reasonably be accessed by the public via the Department's website or such other locations as the Department may establish.

§ 2-218.45 Mandatory set-asides of contracts in the District of Columbia supply schedule for small business enterprises or certified business enterprises.

(a) Each agency shall award contracts of \$250,000 or less to a small business enterprise included on the District of Columbia Supply Schedule.

(b) An agency may decline to award a contract or procurement set aside under this section, and may thereafter issue the contract or procurement in the open market if the agency determines in writing that the bids for the contract or procurement set aside for a small or certified business enterprise are believed to be 12% or more above the likely price on the open market.

(c) If an agency determines in writing that there are not at least 2 responsible small business enterprises on the District of Columbia Supply Schedule that can provide the services or goods that are the subject of the contract, the agency may use any certified business enterprise to fulfill the requirements of subsection (a) of this section.

(d)) Each written determination pursuant to subsection (b) or (c) must be submitted to the Director, who shall post a copy of the determination so that it can reasonably be accessed by the public via the Department's website or such other locations as the Department may establish.

§ 2-218.46. Performance and subcontracting requirements for construction and non-construction contracts; subcontracting plans.

(a) (1) All construction contracts for government assisted projects in excess of \$ 250,000 shall include the following requirements unless a waiver has been approved in accordance with §2-218.51:

(A) At least 35% of the dollar volume of the contract shall be subcontracted to small business enterprises; or

(B) If there are insufficient qualified small business enterprises to completely fulfill the requirement of subparagraph (A) of this paragraph, then the subcontracting requirement may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises; provided, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

(2) All non-construction contracts for government assisted projects in excess of \$ 250,000 shall include the following requirements unless a waiver has been approved in accordance with §2-218.51;

(A) At least 35% of the dollar volume of the contract shall be subcontracted to small business enterprises; or

(B) If there are insufficient qualified small business enterprises to completely fulfill the requirement of subparagraph (A) of this paragraph, then the subcontracting requirement may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises; provided, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

(3) For the purposes of this section, a business enterprise certified as a small business enterprise, local business enterprise, or disadvantaged business enterprise shall not have to comply with the requirements set forth in paragraphs (1) or (2) of this subsection.

(b) (1) (A) Each construction contract for government assisted projects for which a certified business enterprise or joint venture is selected as a prime contractor and is granted points or a price reduction pursuant to § 2-218.43 or is selected through a set-aside program under this subpart shall include a requirement that the business enterprise self-perform at least 60% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracted effort shall be with certified business enterprises; provided, however, that a certified business enterprise or joint venture selected as general contractor who will subcontract the majority of the work to be performed under the contract to trade subcontractors shall have to perform at least 60% of the general contractor function.

(B) If the total of the contracting effort performed by certified business enterprises is less than the amount required by subparagraph (A) of this paragraph, then the business enterprise shall be subject to enforcement pursuant to § 2-218.63.

(c) Repealed.

(d)(1) If subcontracting is required pursuant to § 2-218.46(a) or (b), each bid or proposal responding to a solicitation, including an open market solicitation, shall be deemed nonresponsive and shall be rejected if the prime contractor fails to submit a detailed certified business entity subcontracting plan as part of its bid or proposal;

(2) Notwithstanding § 2-218.46(d)(1), a bid or proposal from a general contractor, construction manager or design-builder shall not be required to identify specific construction trade subcontractors as a condition precedent to performing preconstruction services. The general contractor, construction manager or design-builder shall, however, be required to provide a detailed certified business entity subcontracting plan prior to entering into a guaranteed maximum price or such other contractual action authorizing the contractor to commence construction.

(3) A detailed certified business enterprise subcontracting plan shall specify the following:

(a) The name and address of the subcontractor;

(b) Whether the subcontractor is currently certified as a certified business enterprise;

(c) The scope of work to be performed by the subcontractor; and

(d) The price to be paid by the contractor to the subcontractor.

(e) No prime contractor shall be allowed to amend its approved the subcontracting plan filed as part of its bid or proposal except with the consent of the contracting officer and the Director. Any proposed changes to an approved

subcontracting plan that would result in the plan failing to meet the requirements of this act shall be treated as a waiver request pursuant to §2-218.51.

(f) No multiyear contracts or extended contracts in which the options or extensions exceed \$ 1 million in value, which are not in compliance with this subchapter at the time of the contemplated exercise of the option or extension, shall be renewed or extended, and any such option or extension shall be void.

(g) The subcontracting requirements of this section may be waived pursuant to § 2-218.51.

(g-1) The subcontracting requirements of this section shall be achieved on a project basis, not on a construction division basis.

(h) A prime contractor shall submit to the contracting officer and the Director copies of the executed contracts with the subcontracts identified in the subcontracting plan. Failure to submit copies of the executed contracts shall render the underlying contract voidable by the District.

(i) Beginning on April 20, 2010, each contractor or beneficiary shall provide to the Department a quarterly report, which shall include a list of each subcontractor identified in the subcontracting plan for utilization of certified business enterprises, and for each subcontract:

- (1) The price to be paid by the contractor to the subcontractor;
- (2) A description of the goods procured or the services contracted for; and
- (3) The amount paid by the contractor to the subcontractor.

(j) In calculating the dollar volume subcontracted to certified business enterprises as required by the provisions of § 2-218.46(a) or (b), work subcontracted to a certified business enterprise shall only count toward such requirements if the certified business enterprise self-performs at least 60% of the dollar volume of the subcontracted work. Notwithstanding the foregoing, if the certified business enterprise does not serve a commercially useful function in the subcontracting arrangement or the performance of the contract, such participation shall not count towards the subcontracting requirements.

§ 2-218.47. Unbundling requirement

The Mayor shall establish procedures to ensure that solicitations are subdivided and unbundled and that smaller contracts are created to the extent feasible and fiscally prudent.

§ 2-218.48. Enforcement and penalties for breach of subcontracting plan.

(a) For any subcontracting plan required pursuant to §2-218.46(d), the contractor shall be deemed to have breached the subcontracting plan for utilization of certified business enterprises in the performance of a contract if the contractor:

- (1) Fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in reasonably timely manner;
- (2) Submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or
- (3) Fails to meet the subcontracting requirements pursuant to §2-218.46.

(b) A contractor that is found to have breached a subcontracting plan for utilization of certified business enterprises shall be subject to the imposition of penalties, including monetary fines, pursuant to § 2-218.63.

§ 2-218.49. Other procedures and programs.

(a) The Mayor shall establish policies and procedures to maximize the participation of certified business enterprises in the contracting and procurement processes, including:

(1) A procedure whereby an agency may waive bid security requirements on contracts in excess of \$ 100,000, where the waiver is appropriate to achieve the purposes of this subchapter; and

(2) A policy whereby an agency may make advance payments to a certified contractor, where the payments are necessary to achieve the purposes of this subchapter; provided, however, that an agency shall not be permitted to advance more than ten percent (10%) of the total value of any contract..

(b) The Mayor may establish a pilot set-aside program for small business enterprises with gross revenues of \$ 5 million or less.

§ 2-218.49a. Equity and development participation

(a) In all development projects conducted pursuant to a disposition under D.C. Code §10-801, small investors, disadvantaged investors or certified equity investor enterprise ("Certified Equity Participants") shall invest a minimum of 20% of the total sponsor equity, excluding debt financing, mezzanine financing or other equity contributions by limited and/or institutional investors,

(1) A Certified Equity Participant is a single purpose legal entity created to participate in real estate development projects and includes members that are small investors or disadvantaged investors;

(2) A small investor is:

(A) a small business enterprise pursuant to §2-218.32; or

(B) a District domiciled individual with a net worth that does not exceed the limit set by the Department for investors pursuant to regulations promulgated under §2-218.32 ;

(3) A disadvantaged investor is:

(A) a disadvantaged business enterprise pursuant to §2-218.33;

(B) a District domiciled economically disadvantaged individual;

(b) Demonstration by a project sponsor of its intent and ability to meet the 20% equity requirement pursuant to 2-218.49a(a) shall be a condition precedent to the transfer of any District-owned property for a Covered Project.

(c) In meeting the equity investment requirement in (a) of this subchapter, a Certified Equity Participant may be a 100% sponsor of a component of a Covered Project provided that Certified Equity Participant participation totals 20% of the total equity of the Covered Project.

(d) For each Government-assisted project involving development, in addition to complying with the general subcontracting provisions in § 2-218.46, at least 20% of the dollar volume of non-construction development goods and services shall be subcontracted to small business enterprises and if there are insufficient qualified small business enterprises to completely fulfill this requirement then the requirement may be satisfied by contracting 20% of that dollar volume to any certified business enterprises; provided, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall development goods and services work.

(e) (1) No more than 25% of the total 20% equity participation requirement ("equal to 5%") set forth in subsection (a) of this section may be met by a certified business enterprise providing development services

in lieu of a cash equity investment that will be compensated by the developer in the future at a date certain ("sweat equity contribution").

(2) The developer and the certified business enterprise shall sign a service agreement describing the following:

(A) A detailed description of the scope of work that the certified business enterprise will perform;

(B) The dollar amount that the certified business enterprise will be compensated for its services and the amount the certified business enterprise is forgoing as an investment in a project;

(C) The date or time period when the certified business enterprise will receive compensation;

(D) The return, if any, the certified business enterprise will receive on its sweat equity contribution; and

(E) An explanation of when the certified business enterprise will receive its return as compared to other team members or investors.

(f) The Mayor shall promulgate proposed rules to implement the provisions of this section within 120 days of the effective date of this act.

(g) This section shall not apply if the entity that controls the development project is an entity tax-exempt under section 501(c) of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C.S. § 501(c)), or other not-for-profit entity.

(h) This section shall not apply to any development project for which a contract for purchase of one or more parcels of real property has been executed prior to the effective date of this act.

§ 2-218.50. Special requirements for government corporations

Repealed.

§ 2-218.51. Waiver of subcontracting requirements

(a) The subcontracting requirements of § 2-218.46 may be waived only if there is insufficient market capacity for the goods or services that comprise the project and such lack of capacity leaves the contractor commercially incapable of achieving the subcontracting requirements at a project level. The subcontracting requirements of § 2-218.46 may only be waived in writing by the Department. An agency seeking waiver of the subcontracting requirements of § 2-218.46 shall submit to the Department a request for waiver which shall include the following:

(1) the number of certified business entities, if any, qualified to perform the elements of work that comprise the project;

(2) a summary of the market research or outreach conducted to analyze the relevant market; and

(3) the consideration given to alternate methods for acquiring the work to be subcontracted in order to make such work more amenable to being performed by certified business enterprises;

(b) If the Department approves an agency's request for waiver of the subcontracting requirements of § 2-218.46 and grants such a waiver, the Department's determination shall set forth the information outlined in subsection (a) of this section. A copy of the Department's determination shall be posted to the Department's website or other such locations as the Department may establish for 5 days such that the public shall have reasonable access to the determination prior to the Department granting any waiver.

§ 2-218.52. Enforcement mechanism against an agency

(a) If an agency fails to meet any of the goals set forth in § 2-218.41, the Department may require that a portion of the agency's contracts and procurements be made part of a set-aside program for small business enterprises.

(b) The performance plan for each agency shall include a metric for compliance with the provisions of this subchapter and the performance evaluation for each agency director shall reflect the agency's success in meeting compliance goals.

§ 2-218.53. Agency reporting requirements

(a) Each agency shall submit a quarterly report to the Department within 30 days after the end of each quarter, except for the 4th quarter report. The 4th quarter and annual report shall be submitted together. When submitting a quarterly report, each agency shall list each expenditure as it appears in the general ledger from the expendable budget of the agency during the quarter, which shall include:

- (1) The name of the vendor from which the goods or services were purchased;
- (2) The vendor identification number as it appears in the general ledger;
- (3) A description of the goods or services;
- (4) Whether the vendor was a certified small business enterprise;
- (5) The funding source for the expenditure (local, federal, capital, or other);
- (6) The date of the expenditure;
- (7) The dollar amount of the expenditure; and

(8) If the vendor is a certified business enterprise, the percentage the amount from paragraph (7) of this subsection is of the agency's total expenditure on all certified business enterprises.

(a-1) In addition to the report of prime contracting activity required by subsection (a) of this section, each agency shall also submit to the Department within 30 days after the end of each quarter, a report on a contract basis of payments made by prime contractors to subcontractors that are certified business entities and such payments shall be reported against the amounts included in the approved detailed certified business entity subcontracting plan.

(b) Each agency shall submit to the Department, within 30 days of the issuance of the Comprehensive Annual Financial Report, an annual report listing each expenditure as it appears in the general ledger from the expendable budget of the agency during the fiscal year which shall include:

- (1) The information required to be included in the quarterly reports (with calculations for the fiscal year);
- (2) A description of the activities the agency engaged in, including the programs required by this part, to achieve the goals set forth in § 2-218.41; and
- (3) A description of any changes the agency intends to make during the succeeding fiscal year to the activities it engages in to achieve the goals set forth in § 2-218.41.

(c) The Department shall monitor agency compliance with the reporting requirements of this section.

(d) Repealed.

(e) The Department shall review the annual report of an agency to determine whether the planned activities of the agency for the succeeding fiscal year are likely to enable the agency to achieve the goals set forth in § 2-218.41. The Department shall make recommendations on activities the agency should engage in to meet or exceed the goals set forth in § 2-218.41. The Department's recommendations shall be submitted to the agency, and the Council within 30 days of the agency's annual report submission.

§ 2-218.54. Repealed.

§ 2-218.55. Regional governmental entities

(a) Except as provided in subsection (b) of this section, a regional governmental entity shall be exempt from the requirements of this subchapter to the extent that the requirements of this subchapter impact on the regional governmental entity's operations within the territory of a member government other than the District.

(b) The District of Columbia Water and Sewer Authority shall be exempt from the requirements of this subchapter to the extent that the requirements of this subchapter are contrary to procurement regulations promulgated pursuant to statutes establishing the District of Columbia Water and Sewer Authority.

§ 2-218.61. Certification of registration.

(a) No business enterprise shall be permitted to participate in a program established under this part unless the business enterprise:

(1) Has demonstrated its capability to perform and been issued a letter of certification under the provisions of this subchapter; or

(2) Has been issued a provisional certification under regulations issued pursuant to this subchapter.

(b) (1) An enterprise seeking to be certified as a local, small, or disadvantaged business enterprise, as a resident-owned business enterprise, a local business enterprise with its principal office located in an enterprise zone, a longtime resident business enterprise, a veteran-owned business enterprise, or a local manufacturing business enterprise shall file with the Department a written application on such form as may be prescribed by the Department.

(2) The application shall include, at a minimum, the following documents and information:

(A) A certification of the correctness of the information provided;

(B) Written evidence that the applicant is:

(i) A bona fide local business enterprise;

(ii) A bona fide disadvantaged business enterprise;

(iii) A bona fide small business enterprise;

(iv) A bona fide local business enterprise located in an enterprise zone;

(v) A bona fide resident-owned business enterprise;

(vi) A bona fide longtime resident business enterprise;

(vii) A veteran-owned business enterprise; or

(viii) A local manufacturing business enterprise;

(C) Evidence of ability and character;

(D) Evidence of financial position, which may be the applicant's most recent financial statement. For the purposes of this subparagraph, the term "recent" means produced from current data no more than 90 days prior to the application date;

(E) Any other information the Department may require; and

(F) Federal income taxes, both corporate and personal, as well as District taxes, both corporate and personal.

(c) The Department shall issue the applicant a certificate of registration if:

(1) The information provided in the application or additional filings is satisfactory to the Department;

(2) The business enterprise meets the standards of this subchapter; and

(3) The applicant fulfills other requirements as may be established by the Department.

(d) A certificate of registration shall expire 2 years from the date of approval of the application. A business enterprise that is registered with the Department may voluntarily relinquish its registration as a certified business enterprise at any time prior to the expiration of the 2-year term.

(e) The Department shall give first priority in reviewing applications submitted pursuant to subsection (b) of this section to any business enterprises that has received a provisional certification pursuant to § 2-218.62.

§ 2-218.62. Provisional certification; self-certification prohibited.

(a) The Department may authorize a business enterprise to participate in a program established under this part without receiving a certificate of registration under § 2-218.61; provided, that such authorization shall be granted only when:

(1) A business enterprise is applying for certification in order to bid on a contract or procurement for which responses are due within the next 45 days;

(2) The business enterprise has submitted a majority of the information required under § 2-218.61; and

(3) The Department reasonably believes that it will certify the business enterprise after the business enterprise has submitted all of the information required under this subchapter or regulations promulgated pursuant to this subchapter.

(b) An authorization granted under this section shall not last for more than 90 days.

(c) The Department shall make authorizations under subsection (a) of this section pursuant to rules promulgated pursuant to this subchapter.

(d) A business enterprise may not self-certify or self-authorize to participate in a program established under §§ 2-218.43 through 2-218.49.

§ 2-218.63. Revocation of registration; challenges to registration; penalties.

(a) It shall be a violation of this subchapter and penalties may be assessed if the Department determines that:

(1) a business enterprise:

(A) Fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information as required by §2-218.46(d) in a reasonably timely manner;

(B) Fails to submit any documentation required by this subchapter or reasonably requested by the Department;
or

(C) Submits a monitoring or compliance report or other required subcontracting information containing a materially false statement.

(2) a certified business enterprise:

(A) Acted with gross negligence, financial irresponsibility, or misconduct in the practice of a trade or profession;

(B) No longer qualifies as a local business enterprise; or

(C) Misrepresented its capability to the Department.

(3) an individual or business enterprises has:

(A) Fraudulently obtained or held certification;

(B) Willfully obstructed or impeded, or attempted to obstruct or impede, a city official or employee investigating the qualifications of a business entity that has requested certification;

(C) In any certified business enterprise matter administered under this subchapter:

(i) Fraudulently obtained, attempted to obtain, or aided another person in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this subsection;

(ii) Willfully falsified, concealed, or covered up a material fact by any scheme or device;

(iii) Made a materially false statement or representation or a fraudulent statement or representation; or

(iv) Used a false writing or document that the person knows to contain a false or fraudulent statement or entry.

(D) Aided another person in performing an act prohibited under paragraphs (A), (B), or (C) of this subsection;

(E) Furnished substantially inaccurate or incomplete ownership or financial information;

(F) Failed to report changes that affect its eligibility for certification, including relocation of its principal office or change in ownership or control;

(G) Willfully violated any provision of this subchapter or rules adopted pursuant to this subchapter;

(H) Substantially failed to operate and manage a joint venture certified pursuant to § 2-218.39a in accordance with the documentation submitted by the joint venture in its application. There shall be a rebuttable presumption that such failure to operate and manage the joint venture in accordance with the joint venture application was the parties' intent. If the joint venture demonstrates that such failure to operate and manage the joint venture in

accordance with the joint venture application was necessary due to unforeseen business or operational issues, such failure shall not be a violation of this subchapter

(I) Knowingly and willfully submits a monitoring or compliance report or other required subcontracting information containing a materially false statement or knowingly and willfully violates the terms of a subcontracting plan; or

(J) Any other cause the Department determines to be sufficiently serious and compelling to affect responsibility as a District government contractor, including revocation, suspension, or debarment by another governmental entity for any cause listed in rules and regulations.

(4) a business enterprise fails to meet the subcontracting requirements established in § 2-218.46.

(b) It shall be a violation of this subchapter and penalties may be assessed if the Department determines that an individual or business enterprise that has willfully failed to cooperate in an audit or investigation conducted by:

(1) The District of Columbia Auditor pursuant to § 1-204.55; or

(2) The Chairman of the Council or the chairperson of the Council committee that conducts an investigation pursuant to § 1-204.13.

(c) If the Department determines, in accordance with the procedure set forth in subsection (d) of this section, that an individual or business enterprise:

(1) has committed a violation of subsection (a)(1) of this section, the Department may:

(A) assess a civil penalty of not more than \$1,000 for the first offense;

(B) assess a civil penalty of not more than \$10,000 for the second offense; and

(C) assess a civil penalty of not more than \$25,000 for the third offense; for each offense thereafter, the Director shall refer the matter to the Attorney General for the District of Columbia who may bring a civil action under subsection (c)(3)(A) of this section; provided, however, that if the Attorney General for the District of Columbia does not bring a civil action under subsection (c)(3)(A) of this section, the Department may assess a civil penalty of not more than \$25,000 against the business enterprise.

(2) has committed a violation of subsection (a)(2) or (a)(3) of this section, the Department may suspend or revoke the certification of a business enterprise.

(3) has committed a violation of subsection (a)(3), in addition to the penalties set forth in subsection (c)(2) of this section:

(A) the Attorney General for the District of Columbia may bring a civil action in the Superior Court of the District of Columbia against a business enterprise and the directors, officers, or principals of a business enterprise. A business enterprise or individual found to be in violation under subsection (a)(3) of this section shall be subject to a civil penalty of the greater of \$100,000 or triple the profit earned by the business enterprise on all contracts awarded to the business enterprise as a result of its certification as a certified business enterprise; and

(B) the Department shall refer the matter to the Office of Contracting and Procurement for investigation. If the Office of Contracting and Procurement determines that the business enterprise is guilty of a violation of subsection (a)(3) of this section, the business enterprise shall be debarred.

(4) has failed to use commercially reasonable best efforts to meet the subcontracting requirements established in § 2-218.46, the Department may assess a civil penalty equal to 10% of the dollar volume of the

contract that the contractor was required but failed to subcontract. For the purposes of this subsection, commercially reasonable best efforts shall require that the contractor take all such actions that a similarly situated contractor would take to accomplish the goal; provided, however, that the foregoing shall not require the contractor to expend amounts that are disproportionate to the benefit being obtained.

(5) has committed a violation of subsection (b) of this section, the Department may assess a civil penalty of not more than \$1,000.

(6) The penalties provided for in this subsection shall be in addition to any other causes of action or remedy, legal or equitable, that may be available.

(d) (1) (A) Any person may file with the Department a complaint alleging a violation of this subchapter against an applicant for registration or a business enterprise registered pursuant to this subchapter. The complaint shall be in writing, sworn to by the complainant, and notarized.

(B) The Department shall establish a fraud hotline for reporting violations of this section.

(2) The Department, without a hearing, may dismiss a complaint which it determines to be frivolous or otherwise without merit. If the Department dismisses a complaint, the Department shall prepare a report documenting the following:

(A) A statement detailing the complaint, including the name, address, and telephone number of the person filing the complaint;

(B) The name of the applicant for registration or business enterprise alleged to be in violation of this subchapter;

(C) The facts and legal authority considered in rendering the determination; and

(D) Any other information considered in rendering the determination.

(3) The Department shall maintain a record listing all complaints, which shall contain the following information:

(A) The name of the applicant or business enterprise alleged to be in violation of this subchapter;

(B) The date the complaint was made to the Department; and

(C) A description of the complaint.

(4) (A) If the Department does not determine that a complaint is frivolous or otherwise without merit in accordance with subsection (d)(2) of this section, it shall hold a hearing on the complaint within 3 months of the filing of the complaint. The Department shall determine the time and place of the hearing. The Department shall cause to be issued and served on the person or business enterprise alleged to have committed the violation, hereafter called the "respondent", a written notice of the hearing together with a copy of the complaint at least 30 days prior to the scheduled hearing. Notice shall be served by registered or certified mail, return receipt requested, or by personal service. At the hearing, the respondent shall have the right to appear personally or by a representative and to cross-examine witnesses and to present evidence and witnesses.

(B) If, after the conclusion of the hearing, the Department determines that the respondent has violated the provisions of this subchapter or regulations issued pursuant to this subchapter, the Department shall issue, and cause to be served on the respondent, a decision and order, accompanied by findings of fact and conclusions of law, and any penalty permitted by subsection (c) of this section.

(C) The Department may at any time reissue a certificate of registration to any firm or joint venture whose certificate has been revoked. The Department may consider whether the firm or joint venture should be required to submit satisfactory proof that conditions within the company that led to the violation have been corrected.

(D) The Department shall have the authority to issue subpoenas requiring the attendance of witnesses and to compel the production of records, papers, and other documents.

(e) Any contract awarded to a business enterprise based on the use of a provisional certification issued pursuant to § 2-218.62 shall be voidable by the District if the final disposition of an application for a certificate of registration is denied pursuant to § 2-218.61.

(f) The Department may downgrade the certification of registration of a business enterprise that ceases to meet the requirements of a particular category of certification; provided, that this subsection shall not apply where a business enterprise ceases to qualify as a local business enterprise.

(g) A business enterprise may appeal (1) the denial by the Department of an application for certification; (2) the revocation or change to a previously issued certification; or (3) an enforcement action taken pursuant to § 2-218.63(c) to the Office of Administrative Hearings. The Office of Administrative Hearings shall consider the appeal pursuant to Chapter 18A of Title 2 [§ 2-1831.01 et seq.], and to Chapter 18 of Title 2 [§ 2-1801.01 et seq.], and to rules promulgated pursuant to those chapters. The Office of Administrative Hearings shall conduct such hearing based on the record developed by the Department. The decision of the Office of Administrative Hearings shall be the final administrative remedy.

§ 2-218.64. Identification of certified business enterprises in bids or proposals; false statements on certification; penalties

(a) (1) Except as otherwise provided by law, a contractor or business enterprise may not:

(A) Identify a certified business enterprise in a bid or proposal unless it:

(i) Has obtained authorization from the certified business enterprise to identify the certified business enterprise in its bid or proposal;

(ii) Has notified the certified business enterprise before execution of the contract of its inclusion in the bid or proposal; and

(iii) Uses the certified business enterprise in the performance of the contract; or

(B) Pay the certified business enterprise solely for the use of its name in the bid or proposal.

(2) A person who violates any provision of this subsection is guilty of a felony and, upon conviction, subject to a fine not to exceed \$ 15,000, imprisonment not to exceed 5 years, or both.

(b) (1) A person may not make false statements about whether an entity has business enterprise certification.

(2) A person who violates this subsection is guilty of a misdemeanor and, upon conviction, subject to a fine not to exceed \$ 5,000, imprisonment not to exceed one year, or both.

§ 2-218.65. Certification audits

The District of Columbia Auditor may conduct random audits of certification files to determine whether the Department followed the requirements set forth in § 2-218.61. The District of Columbia Auditor shall submit findings and recommendations to the Department and the Council.

§ 2-218.66. Services to certified business enterprise

(a) The Department shall provide the following services to certified business enterprises:

- (1) Specialized programs to assist certified business enterprises in securing capital and repairing damaged credit;
- (2) Informational seminars on securing credit and loans; and
- (3) Access to non-traditional financing sources, as well as traditional lending sources.

(b) The Department shall:

(1) Develop a catalog of on-line survival and growth tools and resources that certified business enterprises can access through the Internet or other organizations;

(2) Enter into a memorandum of understanding with a third-party vendor to provide expert consulting and education to assist certified businesses enterprises at risk of failure, including certified business enterprises that are considering filing for bankruptcy;

(3) Develop a formal listing of financing options for business enterprises;

(4) Deliver services that assist workers who become unemployed due to economic fluctuations to begin new businesses; and

(5) Enter into a memorandum of understanding with a third-party vendor to provide one-on-one counseling with potential borrowers to improve financial presentations to lenders.

§ 2-218.67. Establishment of the Volunteer Corp of Executives and Entrepreneurs

(a) There is established the Volunteer Corp of Executives and Entrepreneurs to provide mentoring, education, consulting, and networking services to certified business enterprises within the Department. Notwithstanding any other provision of law, the Volunteer Corp of Executives and Entrepreneurs may solicit contributions from the private sector to be used to carry out its functions under this section.

(b) (1) The Volunteer Corp of Executives and Entrepreneurs shall consist of individuals with at least 10 years of experience in the industry.

(2) Individuals serving within the Volunteer Corp of Executives and Entrepreneurs shall serve without compensation for their services.

(c) The Director shall:

(1) Ensure that the Volunteer Corp of Executives and Entrepreneurs carries out a plan to increase the proportion of persons within the certified business enterprises who are from socially and economically disadvantaged backgrounds;

(2) Ensure that the Volunteer Corp of Executives and Entrepreneurs establishes benchmarks for use in evaluating the performance of its activities and the performance of the individuals serving in the Volunteer Corp of Executives and Entrepreneurs, including the following:

(A) The demographic characteristics and the geographic characteristics of persons within the certified business enterprises assisted by the Volunteer Corp of Executives and Entrepreneurs;

(B) The hours spent mentoring by individuals within the Volunteer Corp of Executives and Entrepreneurs; and

(C) The performance evaluations of the persons or the certified business enterprises assisted by the Volunteer Corp of Executives and Entrepreneurs;

(3) Ensure that the Volunteer Corp of Executives and Entrepreneurs provides one-on-one advice to certified business enterprises; and

(4) Implement a networking program through the Volunteer Corp of Executives and Entrepreneurs, which provides certified business enterprises with the opportunity to make business contacts in their industry.

(d) The Council shall receive an annual report on the implementation of this section.

§ 2-218.68. Management and direction

(a) (1) Beginning with fiscal year 2011, the Department shall develop an annual job creation plan ("Plan") for using District small business development resources as a catalyst for job creation and submit the Plan to the Council within 45 days of October 1st.

(2) The Plan shall include the Department's strategy for drawing on existing programs and other available resources. To evaluate the success of the Department's actions regarding these efforts, the Director shall identify, in consultation with the appropriate personnel from small business development programs, the performance measures and criteria, to include job creation, retention, and retraining goals.

(b) (1) The Department, pursuant to § 2-501 et seq., shall issue rules to develop and implement a consistent data collection process to cover all small business development programs in the District.

(2) The data collection process shall include data relating to:

(A) Job creation;

(B) Performance; and

(C) Any other data determined appropriate by the Director.

(c) Beginning with fiscal year 2011, the Director, in consultation with other departments and agencies, shall submit, within 45 days of October 1, an annual report to the Council on opportunities to foster coordination, limit duplication, and improve program delivery for small business development programs.

(d) (1) The Director shall designate a staff member as a community specialist who is responsible for working with local small development service providers to increase coordination with federal resources.

(2) The Director shall develop benchmarks for measuring the performance of the community specialist under this subsection.

§ 2-218.69. Procurement training and assistance

The Department shall:

(1) Identify contracts that are suitable for certified business enterprises;

(2) Assist certified business enterprises in identifying and preparing for business opportunities made available under the American Recovery and Reinvestment Act of 2009, approved February 17, 2009 (Pub. L. No. 111-5; 123 Stat. 115), through informational presentations and the dissemination of information; and

(3) Provide technical assistance regarding the District and federal procurement processes, including assisting certified business enterprises to comply with local and federal regulations and bonding requirements.

§ 2-218.71. Triennial review of program and subchapter.

(a) Every 3 years following October 20, 2005, the Department shall submit to the Council, and the Mayor the results of an independent evaluation of the certified business enterprise programs. This evaluation shall compare the costs of contracts awarded pursuant to this subchapter to the cost of contracts awarded without use of the set-asides and bid preferences authorized by this subchapter. This evaluation shall also compare economic outcomes such as revenue, tax payments, and employment of District residents for certified business enterprises certified pursuant to Part D of this subchapter to economic outcomes for similar firms that are not certified pursuant to Part D of this subchapter.

(b) The Department shall review the findings in the triennial report and the goals, intents, and purposes of this subchapter. The Department shall transmit to the Council and the Mayor a report setting forth any recommended amendments to this subchapter.

§ 2-218.72. Rulemaking authority.

The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement this subchapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

§ 2-218.75. Small Business Micro Loan Fund

(a) For the purposes of this section, the term:

(1) "Eligible recipient" means businesses certified as small business enterprises pursuant to § 2-218.32 or disadvantaged business enterprises pursuant to § 2-218.33.

(2) "Fund" means the Small Business Micro Loan Fund.

(b) There is established as a nonlapsing fund the Small Business Micro Loan Fund, which shall be used for the following purposes:

(1) To grant the local funds necessary to obtain federal matching funds to establish a procurement technical assistance program in the Department;

(2) To make a one-time grant in an amount of \$ 50,000 to provide operating support to a newly formed business association in Ward 3; and

(3) To provide financial assistance, including grants, loans, and loan guarantees, to eligible recipients.

(c) (1) All funds deposited into the Fund shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(2) Any penalties assessed by the Department pursuant to § 2-218.48 and any civil penalties imposed pursuant to § 2-218.63(c) and any fees collected pursuant to § 2-218.49a(a-1) shall be collected by the Department and deposited into the Fund.

(d) Preference for financial assistance shall be given to:

(1) Eligible recipients that are also certified as resident-owned businesses pursuant to § 2-218.35; or

(2) Eligible recipients that serve, or whose principal office is located in:

(A) A DC Main Street corridor;

(B) A Neighborhood Investment Program Target Area; or

(C) Another area identified by the Mayor for economic development or commercial revitalization.

(e) Within 90 days of September 18, 2007, the Mayor shall issue rules to implement the provisions of this section. The Mayor shall submit the proposed rules to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within the 45-day review period, the proposed rules shall be deemed approved.

§ 2-218.76. Commercial Revitalization Assistance Fund

(a) (1) There is established as a nonlapsing fund the Commercial Revitalization Assistance Fund ("Fund"). All funds deposited into the Fund and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(2) The Fund shall be administered by the Department of Small and Local Business Development and shall be separate and independent from any other commercial revitalization programs provided by the District.

(b) The Fund shall be used solely to provide commercial revitalization funding to Main Streets programs and other commercial revitalization services; provided, that the Fund shall not be used to provide commercial Clean Team services within a geographic area that is subject to a Business Improvement District, as defined in § 2-1215.02(7); except, that beginning in fiscal year 2013, the commercial Clean Team services shall include service in the vicinity of the intersection of Minnesota Avenue, S.E., and Pennsylvania Avenue, S.E.

§ 2-218.82. Repealers

(a) Sections 2-215.03, 2-215.04, and 2-215.11 are repealed.

(b) Subchapter IX of Chapter 2 of Title 2 [§ 2-217.01 et seq.] is repealed.

(c) An order, rule, or regulation in effect under a law repealed by this section shall remain in effect under the corresponding provision enacted by Subtitle N of Title II of D.C. Law 16-33 [D.C. Law 16-33, §§ 2301 to 2391, concerning small, local, and disadvantaged business enterprise development and assistance] until repealed, amended, or superseded.